

1
2
3
4
5
6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
8

9 RICHARD IDEN,

10 *Plaintiff,*

11 vs.

12 STATE OF NEVADA , *et al.*,

13 *Defendants.*
14

3:14-cv-00003-RCJ-VPC

ORDER

15 This prisoner civil rights action comes before the Court for initial review.

16 Plaintiff did not properly commence this action by either submitting an application to
17 proceed *in forma pauperis* or paying the filing fee.

18 The Court will dismiss this improperly-commenced action without prejudice. It does
19 not appear that a dismissal without prejudice will materially impact the analysis of any statute
20 of limitations issue or other issues in a promptly filed and properly commenced new federal
21 action or otherwise result in substantial prejudice.¹
22

23 ¹Plaintiff's civil rights complaint necessarily challenges the validity of his April 2008 state conviction,
24 habitual criminal adjudication, and sentence. He names as defendants the State of Nevada and the presiding
25 state district court judge in his official capacity. Plaintiff alleges, *inter alia*, that "[a]lthough I pled guilty to a
26 Class C felony theft, it was placed on my record as a Class B felony which has negatively effected [sic] my
27 good time and work credits causing me to serve more time." He requests that his case be "sent back" to the
28 state district court and that he be awarded monetary damages. The online docket records of the state district
court and state supreme court reflect that sundry proceedings challenging plaintiff's conviction, habitual
criminal adjudication and/or sentence concluded more than three years ago in 2010.

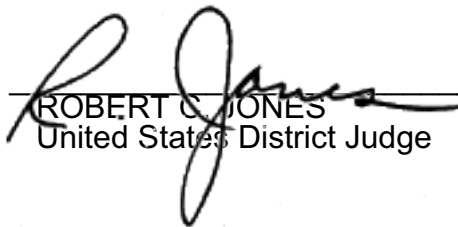
Plaintiff's claims thus would appear to be either: (a) barred under *Heck v. Humphrey*, 512 U.S. 477
(1994), as not cognizable unless and until his conviction has been overturned and/or his alleged increased

(continued...)

1 IT THEREFORE IS ORDERED that this action shall be DISMISSED without prejudice
 2 to the filing of a new properly commenced action under a new docket number with either the
 3 required filing fee or a properly completed application to proceed *in forma pauperis*. The
 4 Clerk of Court shall SEND plaintiff two copies each of a pauper form for prisoner, a civil rights
 5 complaint form, and a noncapital habeas petition form, along with the instructions for the
 6 forms and one copy of all papers that he submitted.

7 The Clerk shall enter final judgment accordingly, dismissing this action without
 8 prejudice.

9 Dated: This 17th day of January, 2014.

10
 11
 12 
 13 ROBERT C. JONES
 14 United States District Judge
 15
 16

17 ¹(...continued)
 18 confinement has been adjudged invalid via, *inter alia*, post-conviction or habeas relief, which has not occurred
 19 in either state or federal court; or (b) barred on their face by the applicable two-year statute of limitations to
 20 any *arguendo* extent that the claims otherwise would have been cognizable notwithstanding *Heck*. Dismissal
 without prejudice of the present improperly commenced action will not materially impact the analysis of such
 issues in a promptly filed and properly commenced new action.

21 The Court additionally notes that the one-year limitation period for bringing a federal habeas action
 22 has expired on its face, absent additional tolling or delayed accrual. Dismissal of this improperly commenced
 23 civil rights action without prejudice therefore will not have any material indirect impact with regard to the
 limitation analysis in any later habeas action.

24 This order does not signify that the complaint is free of other deficiencies. *Inter alia*, plaintiff may not
 25 pursue an action against the State of Nevada in federal court, regardless of the relief sought, due to the state
 26 sovereign immunity recognized by the Eleventh Amendment. Nor may plaintiff seek monetary damages from
 27 a state official named in his official capacity – both because of state sovereign immunity and because the
 state official does not constitute a “person” subject to suit under § 1983 when sued for monetary damages in
 his official capacity. A state court judge further would be absolutely immune from suit for monetary damages
 in his individual capacity based upon judicial actions taken in a state criminal case.

28 Plaintiff at all times remains responsible for calculating the applicable limitations periods and properly
 and timely commencing an action for appropriate relief.